

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 11TH DECEMBER 2006 / 20TH AGRAHAYANA 1928

RSA.No. 1117 of 2006()

AS.273/2005 of DISTRICT COURT, PALAKKAD
OS.429/2001 of MUNSIF COURT, CHITTUR

APPELLANT/APPELLANT/DEFENDANT

MOHANAN, S/O.KUNHAN MANNADIAR,
CHILAMBATH HOUSE, VALMUTTI LANE,
CHITTUR, CHITTUR TALUK.

BY ADV. SRI.D.KRISHNA PRASAD
SRI.D.NARENDRANATH
SRI.M.HARISHARMA
SRI.T.P.ELDHOSE
SMT.O.K.SANTHA

RESPONDENTS/RESPONDENTS/PLAINTIFFS

1. AJITHKUMAR, S/O.GOPINATHAN,
CHILAMBATH HOUSE, VALMUTTI LANE,
CHITTUR TALUK.
2. ANILKUMAR, S/O.GOPINATHAN,
CHILAMBATH HOUSE, VALMUTTI LANE,
CHITTUR TALUK.
3. SWAMINATHAN, S/O.VELUTHARAKAN,
KARIPODE, PUDUNAGARAM, CHITTUR, REPRESENTED
BY POWER OF ATTORNEY HOLDER SURESHKUMAR,
S/O.KUTTIKRISHNA MANNADIAR, KATAMBIDI,
CHITTUR.

R1 & R2 BY ADV.SRI.V.CHITAMBARESH.

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 11/12/2006, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J.

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R.S.A.No. 1117 OF 2006

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Dated this the 11th day of December, 2006.

JUDGMENT

Heard the learned counsel for the appellant and the caveators.

2. The appellant-defendant is the son of the paternal uncle of plaintiffs 1 and 2.

3. The suit properties are paddy fields, including a portion which is stated to have been reclaimed and converted. There is also a structure in the said portion.

4. The defendant lodged a caveat before the trial court contending that he is a licensee and that he expects to be sued. Thereafter, the suit from which this appeal arises, was filed for recovery of possession. To exclude any controversy in that regard, the plaintiffs also revoked the alleged licence.

5. Defendant contested, setting up an oral licence granted in 1984 by the father of plaintiffs 1 and 2, who is the brother-in-law of the third plaintiff. It was also alleged that properties were benami holdings by the plaintiffs on behalf of the father of plaintiffs 1 and 2. On the basis of such plea of licence, the defendant contended that he was permitted to convert the barren land for paddy cultivation and he had carried out certain activities of levelling and conversion of the ground. He pleaded to have constructed a motor shed and converted certain paddy fields into grounds for planting coconut saplings. It is his case that he laid certain PVC pipes. This is the basis of his claim that he is a licensee entitled to the benefit of Section 60(b) of the Easements Act and that the licence has become irrevocable.

6. The courts below concurrently found against the licence set up by the defendant. It was further held that he was not entitled to avail the benefit of Section 60(b) of the Easements Act.

7. In affirming the findings of the trial court, the lower appellate court adverted to and considered the entire evidence on record and held that there is no ground to

uphold the plea of licence set up by the defendant. The transactions by which the plaintiffs obtained title were upheld and the lower appellate court appreciated the evidence by noticing that the burden is on the defendant to prove the oral licence set up by him, as also the terms of that licence. It was held that the evidence of D.W.2 was unacceptable and insufficient to uphold that plea. The courts below also found inherent contradictions between Ext.A18 reply notice and the pleadings in the written statement. On the assertion of the defendant as D.W.1 as regards the licence, it was found that the evidence is neither inspiring nor cogent to uphold an oral transaction of licence in relation to the vast extent of the land involved. The receipts that he has produced were merely basic tax receipts and the receipts for purchase of PVC pipes, evidenced by Ext.B49. The courts below held that it was not proved that the cement and PVC pipes were used for the purpose of any of the activities in the plaint schedule properties, while it is the case, not much in dispute, that the defendant-appellant himself owns properties of similar nature and lying nearby.

From the aforesaid, it can be seen that no substantial question of law arises for decision in this second appeal

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under Section 100 of the Code of Civil Procedure. The appeal does not merit admission. The same is accordingly dismissed *in limine*.

**THOTTATHIL B. RADHAKRISHNAN,
JUDGE.**

Sha/-